

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of:

Verizon Petition for Emergency Declaratory and  
Other Relief

WC Docket No. 02-202

**COMMENTS OF THE MID-SIZE CARRIER GROUP**

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ALLTEL Communications, Inc., CenturyTel, Inc., FairPoint Communications, Inc., Citizens Communications Company (on its own behalf and on behalf of the Frontier and Citizen ILECs under its ownership), Iowa Telecommunications Services, Inc., Madison River Telephone Company, LLC, Rock Hill Telephone Company d/b/a COMPORIUM Communications, Roseville Telephone Company, TDS Telecommunications Corporation, The Concord Telephone Company, Valor Telecommunications Enterprises, LLC, Virgin Islands Telephone Corporation d/b/a Innovative Telephone, and their respective affiliates and subsidiaries (collectively, the “Mid-Size Carrier Group” or “Group”) hereby submit their comments in the above-captioned proceeding, in which Verizon has asked the Federal Communications Commission (“FCC” or “Commission”) to “provide ‘clear guidelines’ to the industry that will allow carriers to protect their ability to obtain payment for services they render to other companies.”<sup>1</sup> To that end, the Group urges the Commission to authorize

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<sup>1</sup> See *Wireline Competition Bureau Seeks Comment on Verizon Petition for Emergency Declaratory and Other Relief*, WC Docket No. 02-202 (July 31, 2002) (“Public Notice”), at 1; *Verizon Petition for*

establishment of a seamless transition customer protection plan (“STCPP”) that will: (1) ensure continuity of incumbent local exchange carrier (“ILEC”) service to interexchange carriers (“IXCs”) and competitive local exchange carriers (“CLECs”) (and their customers); and (2) permit ILECs to receive payment for the services they render to financially distressed IXCs and CLECs.

## **I. INTRODUCTION AND SUMMARY**

The Mid-Size Carrier Group strongly supports efforts to strengthen and clarify the protections afforded the customers and suppliers of carriers in distress. As described in more detail below, the Mid-Size Carrier Group recommends that the Commission: (1) permit ILECs to modify their tariffs to authorize appropriate measures to protect against nonpayment of bills; and (2) clarify IXC/CLEC obligations to provide notice to end users of possible discontinuance as part of a self-executing STCPP that prevents customers from losing service due to the financial distress of their local or long distance carrier.<sup>2</sup>

In achieving these objectives, the Commission should not simply shift the risk of IXC or CLEC nonpayment from distressed carriers to the underlying ILEC suppliers and their other customers. Rather, the Commission should permit ILECs to implement measures, such as requiring deposits, advance payments, and accelerated invoicing, that can increase the chances that the ILECs receive payment for services provided to distressed IXCs or CLECs. In so doing, the Commission would minimize the risk that end users of distressed IXC/CLEC services will be “caught in the middle” of payment

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*Emergency Declaratory and Other Relief*, WC Docket No. 02-202 (filed July 24, 2002) (“Verizon Petition”) at 2.

<sup>2</sup> Unless the context otherwise requires, the Mid-Size Carrier Group uses the terms ILEC, IXC/CLEC, and end user to reference the various groups with strong interests in the issues addressed in this proceeding. The following example illustrates these interests: Mid-Size Carrier Group members (ILECs) provide access services to WorldCom (distressed IXC), which in turn provides long distance services to numerous businesses and individuals (end users).

disputes between ILECs and IXC/CLECs and find themselves at risk of losing service due to their IXC's or CLEC's inability to pay the ILEC for services the ILEC provides. The Mid-Size Carrier Group believes that such measures can be implemented on the basis of objective criteria that will negate any concerns regarding the potential for abuse of the safeguards.

The Mid-Size Carrier Group also supports Verizon's request that the Commission direct distressed carriers to provide ILECs with the basic information necessary to transition end users from one carrier to another. In addition, the Commission should adopt an effective STCPP that provides a framework for an orderly migration of at-risk end users to alternative service providers in the event of default by an IXC or CLEC. A viable STCPP would:

- be seamless and cost-free to end users;
- provide timely notice and appropriate choices for end users;
- be self-executing so as not to be vulnerable to unnecessary regulatory and other delays; and
- require the cooperation of the distressed IXC or CLEC to minimize the risk of service disruption.

To this end, an STCPP should include the following features:

- an objective trigger for implementation based on IXC or CLEC default;
- notice to covered end users upon adoption of the plan;
- joint notice to end users upon implementation of migration;
- interim service rates that will not disadvantage migrated end users;
- provision of all relevant information and performance of all actions by distressed carriers necessary to the migration; and
- a reasonable timeframe during which end users can make informed decisions regarding their preferred future service providers.

Given the current turmoil and instability in the telecommunications market, the Commission should act quickly to approve such appropriate protective measures to ensure that this crisis neither interrupts delivery of telecommunications services to the public nor inflicts unnecessary economic harm on carriers that remain in the market or on end users of telecommunications services.

## **II. THE MID-SIZE CARRIER GROUP**

The Mid-Size Carrier Group,<sup>3</sup> including subsidiary and affiliated companies, represents well over 200 individual operating companies that provide a wide-range of communications services to rural and insular communities. These companies serve smaller and less densely populated communities than the regional Bell Operating Companies (“RBOCs”) and other multi-national communications conglomerates, and are often one of very few choices for local service available to telecommunications end users in their service areas. The Mid-Size Carrier Group thus plays a vital role in the nation’s telecommunications infrastructure.

Members of the Mid-Size Carrier Group offer users myriad communications and related services, including basic telephone service, wireless service, Internet access, video programming and other advanced services to a large number of communities. In addition, they provide numerous services to CLECs and IXC’s, such as WorldCom, including access services for the origination and termination of toll traffic, interconnection services for the transport and termination of local traffic, billing and collection services, fiber capacity and other offerings. Mid-size ILECs, including members of the Mid-Size Carrier Group, account for roughly 13.4 million of the nation’s

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<sup>3</sup> For purposes of these comments, “mid-size” carriers are those with 50,000 to 3 million access lines.

193.8 million access lines (or approximately 7 percent of total access lines in the United States) and a substantial percentage of the nation's rural and insular lines.

Importantly, the commitment of mid-size ILECs to rural and insular areas requires them to maintain a delicate financial balance. Their relatively small size, coupled with the low population densities of the areas they serve, increases their costs and limits their ability to achieve economies of scale. In addition, the topography of the mid-size ILECs' service areas further burdens their costs of doing business. It follows that the Mid-Size Carriers would be acutely harmed where an IXC's or CLEC's financial distress requires them to absorb substantial lost revenues or to continue to provide their already high-cost services without compensation.

### **III. THE VERIZON PETITION FOR EMERGENCY DECLARATORY AND OTHER RELIEF**

In its petition, Verizon requests that the Commission provide "clear guidelines to the industry that allow carriers to protect themselves from the industrywide financial turmoil."<sup>4</sup> Specifically, Verizon asks that the Commission: (1) permit ILECs to file revised tariffs that include measures that protect them against nonpayment of bills by their IXC and CLEC customers; (2) "support independent local exchange carriers' efforts in the bankruptcy courts to obtain adequate assurance of payment for service rendered to customers in bankruptcy; (3) ensure that purchasers of bankrupt carriers' existing service arrangements comply with the cure requirements of bankruptcy law; and (4) direct competitive local exchange carriers to provide the information necessary to coordinate carrier-to-carrier transfers."<sup>5</sup>

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<sup>4</sup> Verizon Petition at 2.

<sup>5</sup> Public Notice at 1.

The Mid-Size Carrier Group recognizes that the Commission is addressing certain of these issues in connection with earlier petitions filed by Verizon and Winstar as well as in the agency's review of tariff revisions filed by Verizon and other carriers.<sup>6</sup> The Commission should act promptly here and in those proceedings to better protect the interests of communications end users in the continuation of their services and those of ILECs in obtaining reasonable assurance of compensation for the services they provide to distressed IXC's and CLECs. The Group stands ready to work with the Commission and state regulators to that end.

As the FCC is aware, the WorldCom bankruptcy court is addressing these types of issues, and the Mid-Size Carrier Group is actively participating in those proceedings. Yesterday, the court granted, in part, the Group's August 5, 2002 request for "adequate assurance" of payment for post-petition services to minimize "the possibility of abrupt and potentially catastrophic termination of services to customers."<sup>7</sup> In particular, the court made clear that service providers such as the members of the Group can take "appropriate action under any applicable tariff or regulation," without further order of the court, to protect their interests in the event of an uncured post-petition default by

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<sup>6</sup> See *Verizon Counter Petition for Declaratory Ruling Regarding ILEC Obligations to Continue Providing Services*, WC Docket No. 02-80 (Apr. 29, 2002); *Winstar Communications, LLC Emergency Petition for Declaratory Ruling Regarding ILEC Obligations to Continue Providing Services*, WC Docket 02-80 (Apr. 17, 2002); Verizon Telephone Companies, Tariff FCC Nos. 1, 11, 14, and 16, Transmittal No. 226 (July 25, 2002); Southwestern Bell Telephone Company, Tariff FCC No. 73, Transmittal No. 2906 (Aug. 2, 2002); Public Notice at 1.

<sup>7</sup> *In re: WorldCom, Inc. et al.*, Opposition of Mid-Size Carrier Group to Motion Pursuant to Sections 105(a) and 366(b) of the Bankruptcy Code for Authorization to Provide Adequate Assurance to Utility Companies and Request for Approval of Seamless Transition Customer Protection Plan, Chapter 11 Case No. 02-13533 (AJG) (Bankr. S.D.N.Y. Aug. 5, 2002) at 5-6 ("Mid-Size Carrier Group Opposition"); *In re WorldCom, Inc. et al.*, Order Pursuant To Sections 105(a) and 366(b) Of The Bankruptcy Code Authorizing WorldCom To Provide Adequate Assurance To Utility Companies, Chapter 11 Case No. 02-13533 (AJG) (Jointly Administered) (Bankr. S.D.N.Y. Aug. 14, 2002) ("Section 366 Order").



WorldCom.<sup>8</sup> This effectively means that the bankruptcy court will not stand in the way of approval and implementation of a self-executing STCPP such as the one the Group proposes.<sup>9</sup> Accordingly, the Commission should now promptly move to approve such an STCPP in order to protect the interests of end users and carriers alike in this time of unprecedented upheaval in the telecommunications sector.

As discussed in more detail below, the measures the Group proposes can guarantee the important objective of continuity of service to end users of IXC/CLEC services (many of which are also local service customers of an ILEC) while increasing the opportunity for ILECs to receive payment from financially distressed IXCs and CLECs. The Mid-Size Carrier Group believes that it is crucial that any Commission action protect the interests of ILECs that serve financially distressed IXCs or CLECs so that the financial woes of such companies do not impair the viability of the ILEC community. The Commission should recognize how devastatingly destabilizing recent bankruptcies have been to the entire telecommunications industry, including mid-size ILECs, which are less able to weather financial setbacks than larger ILECs. Thus, in devising any strategy to protect end users from discontinuance, the Commission should resist imposing additional, unnecessary financial burden on the ILEC community, which could lead to the failure of one or more mid-size ILECs and render those companies incapable of providing critical communications services to individuals, businesses, and government end users. Such a result could not possibly serve the public interest.

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<sup>8</sup> Section 366 Order at 3-4.

<sup>9</sup> See Section 366 Order. WorldCom would still be free to seek an injunction against implementation of such a plan from the court, but the burden would be on WorldCom to justify such action. See Section 366 Order at 4.

**IV. THE COMMISSION SHOULD SUPPORT EFFORTS TO ENSURE CONTINUITY OF SERVICE TO THE PUBLIC WITHOUT SHIFTING THE RISK OF NONPAYMENT TO UNDERLYING ILECS AND THEIR CUSTOMERS**

The highest priority of the Mid-Size Carrier Group is to ensure continuity of service to end users. This can be facilitated seamlessly and without additional cost if ILECs are permitted to revise their tariffs to establish reasonable security deposit requirements, shorter collection schedules, abbreviated notice periods for delinquent customers, and other measures to better encourage payment for services rendered. These measures are necessary because ILECs cannot discontinue service freely. The Mid-Size Carrier Group also asks the Commission to support its efforts in the bankruptcy courts to obtain “adequate assurance” of payment by these and other means, subject to all relevant statutory and regulatory requirements. As discussed below, the Commission should approve these types of changes expeditiously in order to ensure continuity of service to end users, boost distressed IXC/CLEC efforts to retain customers, and ensure that the financial distress of troubled IXCs and CLECs does not impair the financial health of the ILECs that serve them.

**A. The Commission Should Expeditiously Approve Reasonable Tariff Revisions That Protect Customers And Carriers Alike**

The Commission should expeditiously approve tariff revisions that permit ILECs to institute reasonable measures that both facilitate continuity of service to end users and mitigate the risk of nonpayment by IXCs and CLECs. As the Mid-Size Carrier Group explained in its August 5, 2002 filing in the WorldCom bankruptcy proceedings, Group members are exposed to substantial risk of loss in the event of nonpayment by an IXC, such as WorldCom. This is the result of the fact that they are often required to continue providing service for more than ninety (90) days between the start of a billing period and

the date on which they can terminate service.<sup>10</sup> Given the multimillion-dollar magnitude of the obligations to the Mid-Size Carrier Group that WorldCom and other large IXC's can accrue during such a time period, Group members simply cannot sustain this level of risk without an adverse impact on the cost and delivery of services to their end users. They therefore require the payment of deposits in order to offset such risks. IXC's and CLEC's could satisfy this requirement through a variety of means, including prepayment, cash deposits, accelerated billing, irrevocable letters of credit, and third party guarantee agreements.

Permitting ILEC's to revise their tariffs to incorporate advance payment, security deposits, and other protections is fully consistent with Commission precedent and is necessary to permit ILEC's to protect themselves just as creditors of distressed firms in other industries do. As the Verizon Petition notes, the Commission historically has refused "to second-guess a carrier's decision, with respect to a particular customer, to impose deposit, advance payment, or other security arrangements provided for in its tariff."<sup>11</sup> Given the exigent circumstances presented by the current upheaval in the telecommunications sector, the Mid-Size Carrier Group submits that such tariff revisions are more justifiable and necessary now than ever before. Accordingly, the Commission should, consistent with its past practice, approve tariff revisions similar to those that the Mid-Size Carrier Group and other carriers are proposing and permit their prompt implementation.

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<sup>10</sup> Mid-Size Carrier Group Opposition at 5-6.

<sup>11</sup> See Verizon Petition at 5, *quoting Affinity Network Inc. v. AT&T*, FCC Rcd 7885, ¶ 3 (1992) (Memorandum Opinion and Order).

**B. Invocation Of Protective Measures Can Be Governed By Objective Criteria That Eliminate Any Concerns Regarding Potential For Abuse**

The Mid-Size Carrier Group supports the use of objective criteria to determine whether a customer's creditworthiness is impaired and, in turn, whether it is appropriate to invoke deposit requirements or other safeguards. Use of such criteria will remove any concerns regarding the potential for abusive application of such requirements that have been raised by commenters. For example, SBC has suggested that a customer's creditworthiness be deemed "impaired" when: "[ (1) ] any debt securities of a customer or its parent are below investment grade...; [ (2) ] any debt securities of a customer or its parent are rated the lowest investment grade by a nationally recognized credit rating organization and are put on review for a possible downgrade; [ (3) ] the customer does not have outstanding securities rated by credit rating agencies and the customer is rated 'fair' or below in a composite credit appraisal published by Dunn & Bradstreet or 'high risk' in a Paydex score as published by Dun & Bradstreet; [ (4) ] the customer or its parent informs [the carrier] or publicly states that it cannot pay its debts as they become due; and/or [ (5) ]... voluntary or involuntary receivership or bankruptcy."<sup>12</sup> The Mid-Size Carrier Group also supports other reasonable objective impaired creditworthiness criteria, such as: (1) limiting relief to those carriers whose default would have a material impact on the ILEC because of the amount of services purchased; and (2) "habitually late" invoice payment (*i.e.*, more than 30 days late in paying undisputed invoices two or more times in any six-month period).

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<sup>12</sup> Southwestern Bell Telephone Company, Tariff FCC No. 73, Transmittal No. 2906 (Aug. 2, 2002) at 3.

The Mid-Size Carrier Group recognizes that the Commission is reviewing deposit tariffs that BellSouth, SBC, and Verizon have filed.<sup>13</sup> Nonetheless, the Mid-Size Carrier Group respectfully urges the Commission to act swiftly and establish a framework that appropriately protects the interests of consumers and carriers alike. As explained above, because objective criteria do not give ILECs the discretion to determine when the “impaired creditworthiness” standard is met, they negate the possibility that the ILECs will manipulate or abuse them for their own advantage. Rather, objective criteria: (1) promote the interests of end users by ensuring continuity of service; (2) help distressed IXC and CLECs retain business by demonstrating to end users of their services their ability to ensure uninterrupted service; and (3) ensure that the risk of distressed IXC/CLEC nonpayment is not shifted to the ILEC community.

Accordingly, the Mid-Size Carrier Group urges the FCC to be receptive to combinations of deposit requirements, advance payment, letters of credits, and service termination policies that are commensurate with the level of risk ILECs bear when serving distressed IXCs and CLECs. For example, with respect to special access services, which are billed in advance, there is a 60-day revenue risk period (*i.e.*, customers have 30 days to pay the invoice and then another 30 days before the ILEC can terminate service). In the case of switched access services, ILECs face an even longer risk exposure period—90 days between the start of a billing period and the date on which they can terminate service.<sup>14</sup> Deposits covering these risk periods are clearly warranted in the absence of a reduction in such periods as a result of advance payment and changed

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<sup>13</sup> See, e.g., *BellSouth Telecommunications, Inc., Tariff FCC No. 1, Transmittal No. 657*, DA-02-1886 (Aug. 1, 2002) (Order).

<sup>14</sup> Following one month of service, customers have 30 days to pay the invoice for the prior month’s service, and, under typical existing tariffs, ILECs cannot terminate service until payment is 30 days late.

notice requirements. In fact, such timeframes should at a minimum be reduced to 45 days and 75 days, respectively, through shortened termination notice periods.

**C. Successful Implementation Of Protective Measures Requires The FCC And State Regulators To Participate Appropriately In Bankruptcy Court Proceedings**

The Commission, state regulators, and the bankruptcy courts each have an appropriate role to play in bankruptcy proceedings involving communications companies. Although there is no inherent conflict between the Bankruptcy Code and communications regulations administered by the Commission and state regulators, the volume of telecommunications bankruptcies and the numerous issues raised in the context of those proceedings have created some uncertainty. The Commission and state regulators, consistent with the Communications Act and the enabling statutes pursuant to which state authorities act, can eliminate that uncertainty by exercising their authority to permit ILECs to implement the types of safeguards and customer protection plans discussed herein.

Members of the Mid-Size Carrier Group have been creditors in court proceedings involving several telecommunications bankruptcies and are actively participating in the WorldCom bankruptcy. As noted above, in their August 5, 2002 opposition to WorldCom's 366 motion, the Mid-Size Carrier Group urged the court to permit implementation of elements of a broad STCPP and to allow its members to seek various forms of "adequate assurance" of payment, including deposits, shorter billing and collection cycles, and reduced notification times for service termination.<sup>15</sup> However,

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<sup>15</sup> See Mid-Size Carrier Group Opposition at 5-9.

implementation of any relief granted by the court is subject to the approval of the Commission and state regulators.

Accordingly, the Commission should permit ILECs expeditiously to revise their tariffs as part of a broader STCPP. As Verizon has noted, the Commission has rightly intervened in bankruptcy proceedings to protect the rights of end users.<sup>16</sup> Where it does no harm to those end users, it should similarly advocate and protect the interests of ILECs in such proceedings and work to ensure that state regulators do likewise, including through the Joint Board or other appropriate mechanisms.

**V. THE COMMISSION SHOULD SUPPORT THE MID-SIZE CARRIER GROUP'S SEAMLESS TRANSITION CUSTOMER PROTECTION PLAN**

The primary purpose of an STCPP is to ensure continuity of service to customers and, if necessary, cost-free and orderly transition of end users to new providers upon discontinuance of service by distressed IXC or CLECs. As noted above, STCPPs can also help distressed carriers retain customers as they go through the bankruptcy process because such plans guarantee that service will continue in the event of subsequent default by the distressed carrier. Absent such assurances, end users are much more likely to switch providers rather than risk abrupt and potentially ruinous terminations of service. Moreover, STCPPs can help to prevent further carnage in the telecommunications industry by permitting ILECs to invoke protective safeguards in order to ensure their receipt of payment for services provided, thereby avoiding adding additional carriers to the critical list. In contrast, requiring ILECs to absorb enormous financial losses or to receive no payment at all for services rendered to financially distressed IXCs or CLECs

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<sup>16</sup> Verizon Petition at 6.

unfairly shifts the risk of nonpayment to the ILEC community and threatens further disruption as economic problems spread to additional carriers.

As discussed below, consistent with the principles that underlie end user migration plans outlined by the Commission and by state regulators such as the New York Public Service Commission,<sup>17</sup> an STCPP should contain the following features:

- **Seamless:** From an end user's point of view, the transition from a distressed carrier to an alternative provider should be virtually transparent, automatic, seamless, and cost-free;
- **Notice and Choice:** The STCPP should give end users reasonable notice of the migration and a fair and equitable opportunity to transition to a new provider of their choice;
- **Self-Executing:** STCPPs should be self-executing and should become effective automatically without additional FCC or state authorization; and
- **Distressed Carrier Cooperation:** The STCPP should require the full cooperation of the carrier whose customers are being migrated.

The following sections provide an overview of the key features of the Mid-Size Carrier Group's proposed STCPP. As discussed below, the seamless transition of switched access customers from one IXC to another is relatively easy to accomplish because there are few technical barriers to such migrations. On the other hand, mass migrations involving special access or CLEC customers are more complex and pose additional technical challenges. The Mid-Size Carrier Group stands ready to work with the Commission, state regulators, and other carriers to resolve those issues.

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<sup>17</sup> See 2000 Biennial Review—Review of Policies and Rules Concerning Unauthorized Changes of Consumer Long Distance Carriers; Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, CC Docket No. 00-257; CC Docket No. 94-129, 16 FCC Rcd 11218 (2001) (First Report and Order in CC Docket No. 00-257 and Fourth Report and Order in CC Docket No. 94-129) ("FCC Customer Migration Order"); Order Adopting Mass Migration Guidelines, Case 00-C-0188 (Adopted by Order Dec. 4, 2001) ("NYPSC Mass Migration Guidelines").



**A. Seamless Transition Of Switched Access Customers**

As noted above, the transition of switched access customers to a new provider presents no major technical issues. In order to ensure that such transitions are conducted in an orderly manner that protects the interests of end users, the Mid-Size Carrier Group suggests that switched access seamless transition plans incorporate the following elements:

**Timing.** The transition plan is triggered when an IXC default threatens the loss of service to end users, such as for nonpayment for post-petition services in a bankruptcy setting, or following default, notice, and lapse of the cure period in a non-bankruptcy setting. As soon as that standard is met, the STCPP should go into effect automatically, without additional FCC or state regulatory approval.

**Pre-Obligation Notice From IXC.** When a distressed IXC satisfies the objective impaired creditworthiness criteria, IXCs should be required: (1) to inform end users of the risk that service will be changed; (2) to provide to end users a clear written overview of the transition plan; and (3) to advise end users of their rights and of the events that will unfold in the event the transition plan is invoked.

**Joint Transition Letter.** Immediately upon commencement of the transition period, the defaulting IXC and the ILEC (or the ILEC's long distance affiliate) should send a previously drafted and signed joint letter to the affected end users explaining the transition process and informing end users of their options for establishing new long distance service. This letter should also include specific information about the rates the ILEC (or its long distance affiliate) will charge during the transition period. Such notification would be consistent with the procedures outlined in the FCC Customer Migration Order to ensure that end users of an acquired carrier's services are notified of

their right to select a service provider other than the purchaser and to permit carriers to lift presubscribed interexchange carrier (“PIC”) freezes.<sup>18</sup> The joint transition letters recently sent to over 13,000 customers of Adelphia Business Solutions (“ABS”) following SBC’s purchase of ABS’s assets suggest that it is both permissible and efficient for carriers to work together to advise end users of their rights during migrations.<sup>19</sup>

**ILEC Waiver of PIC Change Charge.** In order to implement this aspect of the plan, the Commission and the state regulators should permit ILECs (or their long distance affiliates) to revise their tariffs to limit the universe of end users eligible for the PIC change waiver to those end users that are affected by the severe financial distress of their IXC. PIC change charge waivers should not be available to a broader group of end users.

**Seven (7) Cents Per Minute Long Distance Calling With No Monthly Minimums or Service Fees.** Upon migration and throughout the 30-day transition period, affected end users would receive long distance service from their Mid-Size Carrier Group member, its long distance affiliate, or other eligible long distance provider at 7 cents per minute, with no monthly minimum charges or service fees. This low rate is below no-fee and no-minimum rates charged by most companies and would be more than fair, even to those end users that have special deals with their prior IXC.

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<sup>18</sup> See FCC Customer Migration Order, 16 FCC Rcd at 11229-230.

<sup>19</sup> See In Re: Adelphia Business Solutions, Inc. et al., *Order Pursuant to Sections 105, 363, and 1146 of the Bankruptcy Code, Approving Service Transition Agreement for the Sale to Southwestern Bell of Certain Resale Customer Accounts and Authorizing the Consummation of Transactions Contemplated Therein*, Chapter 11 Case No. 02-11389 (REG) (Jointly Administered) (Bankr. S.D.N.Y. Aug. 8, 2002); In Re: Adelphia Business Solutions, Inc. et al., *Notice of Debtors for Order, Pursuant to Sections 105, 363, and 1146 of the Bankruptcy Code, Approving Purchase Agreement For the Sale to Southwestern Bell of Certain Resale Customer Accounts and Authorizing the Consummation of the Transactions Contemplated Therein*, Chapter 11 Case No. 02-11389 (REG) (Jointly Administered) (Bankr. S.D.N.Y. Aug. 8, 2002), Exhibit A, Purchase Agreement by and between Southwestern Bell Telephone, L.P. and Adelphia Business Solutions Operations, Inc. and Adelphia Business Solutions Investment, LLC, at 8.

**IXC Cooperation.** Although in most cases, ILECs, such as the members of the Mid-Size Carrier Group, will already have a billing relationship with the affected end users, in some cases they will require addresses and other information in order to generate and transmit invoices. They may also require a distressed IXC point of contact who can help them deal with late or missed payments, failures to credit past payments appropriately, and other disputes that might arise. In the context of special access or CLEC mass migrations, automatic, mandatory cooperation of the distressed carrier is even more critical since much information uniquely in the possession of the distressed carrier is necessary to coordinate migrations.

**30-Day Transition Period.** Establishing a 30-day period for end users to select and implement their choices for a new primary interexchange provider would be consistent with the Commission's goal of "provid[ing] customers with a reasonable opportunity to find and transition to a new service provider."<sup>20</sup> Although ILECs implement PIC changes on a daily basis, implementing preferences for significant numbers of end users is not feasible in a compressed time frame. During the 30-day transition period, end users may select a new IXC or make arrangements to receive long distance service from the ILEC (or its long distance affiliate). After the transition period, end users who do not select a new IXC would begin receiving long distance service at the ILEC's lowest per minute, no monthly minimum rate or the lowest rate plan for which they qualify. A simple transition plan containing these elements would ensure that end users received continuous, high-quality service and would protect them from the imposition of unreasonable charges during the transition period. At the same time, the

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<sup>20</sup> See Letter from Michael K. Powell, Chairman, Federal Communications Commission, to John Sidgmore, President and CEO, WorldCom, Inc. (July 22, 2002) at 2.

plan would permit ILECs to transition affected end users to a different IXC in an orderly fashion in keeping with the goals of the NYPSC Guidelines and the FCC Customer Migration Order and without the need to obtain waivers of FCC slamming and other rules.

#### **B. Special Access And CLEC Transition Plan**

Transitioning special access and CLEC customers to new providers potentially raises additional complex issues such as coordination with another provider, availability of facilities, and establishing a billing relationship with a former CLEC customer. Thus, devising an effective STCPP for such services involves important technical and other considerations that are not present in the context of switched access transitions. Moreover, state regulatory authorities must be heavily involved. The Mid-Size Carrier Group has identified below a number of the most critical issues as well as several interim steps the Commission could take to support ILEC efforts to employ arrangements such as “virtual switchovers” that ensure continuity of service and payment. But, the complexity of such migrations makes it impossible to address the full spectrum of special access and CLEC transition issues comprehensively in the context of the instant comments.

As an initial matter, the principles of notice, efficiency, and minimizing disruption to end users that govern switched access migration should also be the foundation of any STCPP for special access and CLEC transitions. However, cooperation of the exiting carrier is an even more critical element of such plans.

##### **1. Special Access Transitions**

Given the complexity of establishing new dedicated or virtual network connections for special access customers and the likely required involvement of at least one additional carrier on the opposite end of the affected dedicated circuits, transitioning

special access customers to a new provider requires more time than transitioning a switched access customer does. Because of the difficulty of transitioning special access customers, it is even more crucial that ILECs be permitted to implement protective measures, such as deposits, in the context of such migrations.

In order not to prejudice the customer's ability to receive uninterrupted special access services, ILECs should be allowed to establish shortened time periods in which customers can make payment. For example, special access is billed in advance, and, as explained above, ILECs currently face 60 days of revenue risk with respect to such accounts (*i.e.*, 30 days to pay invoices, then another 30-days before the ILEC can terminate service). The Mid-Size Carrier Group believes, however, that this period of risk could be reduced to 45 days without adversely affecting the rights of end users or financially distressed IXC's. Under such a reduced risk schedule, distressed IXC's would have 20 days to pay invoices and 5 days to cure. Upon default, the ILECs would work with the exiting IXC during the following 25 days to transition the special access end-user to the ILEC or to another provider of special access services. During the transition period, the end-user could establish a direct billing arrangement with the ILEC to ensure that the ILEC gets paid and that the end-user continues to receive service. In order to establish this billing relationship and transition of the end-user to the ILEC or another provider, the cooperation of the exiting IXC is essential.

## 2. CLEC Transitions

Due to the large number of CLEC bankruptcies, the Commission and the state regulators are well aware of the numerous complex issues that a CLEC's exit from the marketplace presents. Because CLEC transitions raise numerous issues that are under the jurisdiction of state regulatory authorities, the Mid-Size Carrier Group asks that the

Commission support state regulatory efforts to implement STCPPs consistent with the framework set forth herein.

The inherent complexities of CLEC transitions require ILECs and CLECs to cooperate to ensure continuity of service to the end-users, and involve important issues, such as the following:

**Certain Waivers Needed.** In order to ensure that end users receive uninterrupted service, the Commission should grant ILECs a blanket waiver insulating them from liability in connection with mass migrations of end users of CLEC services. Absent a waiver, ILECs could be liable for violating the Commission's slamming rules. In addition, to the extent that end users of CLEC services with local line freezes must receive individual notice of the transition, the exiting CLEC, which has ready access to the end-user's contact information, should be responsible for providing it.

**CLEC Obligation To Notify ILEC And Other Carriers.** The Commission should require CLECs to notify the underlying ILEC and other certificated carriers of their plans to discontinue service. The Commission should also require CLECs to make their customer lists available to ILECs and other certificated carriers on a non-discriminatory basis to facilitate transition of end user service and to give other carriers an opportunity to solicit the business of the CLECs' end users.

**No Interoperability With CLEC CPE.** To the extent that an end user of a CLEC's services utilizes customized customer premises equipment ("CPE"), ILECs that inherit such end users following the CLEC's exit from the market should not be required to modify their networks in order to be interoperable with customized CPE during the transition period. Requiring ILECs to become interoperable with customized CPE during

the transition period would burden ILECs with unnecessary costs, with no guarantee that the end user will remain with the ILEC following the transition period.

**Obligations To Defaulting End Users.** When a CLEC exits the market, the underlying ILEC should be required to assume end users in keeping with their standard customer acceptance criteria. Moreover, 911 service should remain the responsibility of the exiting CLEC until the transition is complete.

To ensure minimal prejudice to customers, the Commission should require the exiting CLEC to provide detailed information regarding the arrangements it had with each end user so that the ILEC can replicate those arrangements to the greatest extent possible. Under no circumstances, however, should ILECs be required to purchase or utilize assets of exiting CLECs in order to serve the exiting CLECs' end users.

**Return Of Numbering Resources.** The FCC should clarify that its numbering policy requires CLECs that exit the market to return numbering resources to the numbering and/or pool administrator. In addition, the Commission should not permit exiting CLECs to deactivate their switches until they have finished migrating ported numbers and updating local number portability databases.

## VI. CONCLUSION

The Mid-Size Carrier Group welcomes the Commission's efforts to address the significant problems posed by the current economic crisis in the telecommunications sector. Above all, the FCC should act so as to minimize the risk that the crisis will be exacerbated in terms of either the risk of service discontinuance to end users, the risk of expansion of economic problems to additional carriers, or the risk of rendering small and mid-size ILECs incapable of providing critical communications services in rural and insular areas. The Group looks forward to providing additional input on their and other proposals as they take form in the coming weeks and to encourage Commission action that ensures against nonpayment and provides for the orderly migration of end users to different service providers in the event that ILECs must terminate service to a defaulting IXC or CLEC.

Respectfully submitted,

THE MID-SIZE CARRIER GROUP

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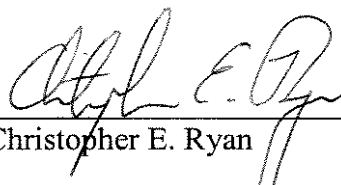


## CERTIFICATE OF SERVICE

I, Christopher E. Ryan, a legal assistant at the law firm of Wiley, Rein & Fielding LLP, counsel for the Mid-Size Carriers Group in the above proceeding, hereby certify that on Thursday August 15, 2002, I served the foregoing Comments of the Mid-Size Carriers Group by first class mail, postage pre-paid, on the following:

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